IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6169 OF 2005

Tibika Gundavaxyes Shinde ...Applicant
Vs.
The State of Maharashtra ...Respondent

Ms Pranali Kakade for the Applicant.
Mr A.S. Gadkari, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 20, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicant and the learned A.P.P. for the State.

2. The case of the prosecution is that the co-accused Salim Lailasha Kale, Lailasha Kale, the Applicant and four other persons picked up the first informant (deceased) and was taken to the house of Lailasha Kale. The specific allegation is that the first informant was detained in the house of the Lailasha Kale and all the accused persons abused him and assaulted him by fist blows and kicks. The allegation was that on the next day, the accused persons tried to force the first informant to sign on a stamp paper and as he refused to do so, clothes on his person were removed and accused Salim and Gondavanya assaulted him by knives on his private parts. The allegation is that he was allowed to wear

clothes and was taken by co-accused Salim on Baramati-Indapur Road. The allegation is that one of the accused persons pushed the first informant in front of a truck. The first informant later on sccumbed to the injuries. The offence has been registered under section 363, 365, 382, 302, 323, 504 read with section 34 of the Indian Penal Code. The learned Advocate for the Applicant submitted that the Applicant has played no role in the assault on the deceased-first informant. The learned Advocate for the Applicant submitted that after completion of investigation, the Applicant need not be detained in jail. The learned A.P.P. pointed out that the Application made by the co-accused Lailasha who has played no role in the assault on the deceased has been rejected by this Court. He, therefore, submitted that considering the participation of the Applicant, section 34 of the Indian Penal Code has been applied and therefore, no case is made out for enlarging the Applicant on bail.

3. Perusal of the order passed in Criminal Application No.5889 of 2005 filed by the co-accused Lailasha shows that this Court observed that when the first informant was picked-up, he was made to seat on a motorcycle between co-accused Salim and Lailasha.

The first informant was taken to the house of the co-accused Lailasha wherein the incident of brutal assault on the deceased has allegedly taken place. The perusal of the statement of the first informant shows that he was picked up by co-accused Salim and was made to seat on a motorcycle between co-accused Salim and co-accused Lailasha. He has stated that the other accused persons followed co-accused Salim and Lailasha to the house of Lailasha where a demand for money was made. General allegation has been made against the all accused persons regarding assault by the fist blows and kicks. The allegation of assault by knives is against co-accused Salim and Gondavanya. No specific role has been ascribed to the Applicant in the subsequent part of the offence, namely, taking the Applicant to Baramati-Indapur Road and pushing him on the road. In so far as Lailasha is concerned, he has played active role in picking up the first informant and he assault on the first informant was made in his house. That is the reason why his application was rejected.

4. The police have recorded statement of one Vinayak Krishna Khabale who was also abducted by the accused persons for which a separate F.I.R. has been registered. According to the said statement when the

said witness was detained in the house of Lailasha, the first informant in the present case was brought there. In the said statement, there is no specific role ascribed to the present Applicant. He has ascribed specific role to Salim, Gondavanya and Lailasha who are co-accused. The present Applicant has been arrested on 04th April, 2005. The chargesheet has been admittedly filed. In my view, considering the limited role ascribed to the Applicant, a case is made out for enlarging the Applicant on bail subject to stringent conditions.

5. Hence, I pass the following order:

: O R D E R ;

i) The Applicant shall be enlarged on bail in connection with **C.R.No.52 of 2005 registered with Indapur Police Station,District Pune,** subject to furnishing a personal bond of **Rs.15,000/-** with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will not enter the area falling within the jurisdiction of Indapur Police Station, Taluka Indapur, District Pune till the conclusion of trial.

iii) The order granting bail will be given effect only after the Applicant furnishes to the Investigating Officer a detailed address of place of residence where he proposes to stay after he is enlarged on bail and only after the said place of address is verified by the Investigating Officer to be correct.

iv) The Applicant will attend the concerned local Police Station after he is enlarged on bail once in a fort-night till the conclusion of trial.

v) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

vi) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vii) Any observation made in this order shall not be construed as any finding or any expression of

opinion on the merits of the case at the time of trial.

viii) Application is disposed of in above terms.

ix) The parties to act upon an authenticated copy of this order.

JUDGE